

## **REMARKS**

Applicants respectfully request consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed July 10, 2006, which was made final. An RCE accompanies this Amendment.

In this Amendment, claims 1, 6, 7, 12, 13, 18, 19 and 24 have been amended. No new matter has been added as a result of these amendments.

Applicants reserve all rights with respect to the applicability of the doctrine of equivalents.

### **Claim Rejections under 35 U.S.C. §102(e)**

The Examiner has rejected claims 1-2, 4, 6-8, 10, 13-14, 16, 18-20 and 22 under 35 U.S.C. §102(e) as being anticipated by Chapman, et al. (USPN 6,304,552, "Chapman").

In independent claims 1, 7, 13 and 19, as amended, applicants claim the limitation of: marking a portion of the data segments of each class of service corresponding to the associated guaranteed percentage of the transmission bandwidth of the class of service if data transmitted from a class of service exceeds the associated guaranteed percentage of the transmission bandwidth of the class of service, wherein a portion is less than all of the data segments.

Chapman discloses two different classes of traffic (C1 and C2) traveling through a data communications network. (Chapman, Col. 5, lines 36-42). Each particular class of traffic going to a particular output port requires its own queue. (Chapman, Col. 11, lines 4-5). A priority setting (HI or LO) is established for a queue associated with the logical pathway between two ports. (Chapman, Col. 9, lines 27-31). Accordingly, if the output rate of a queue is less than minimum bandwidth allocated, then the queue is set to a HI priority setting. (Chapman, Figure 5, block 512). Otherwise, if the output rate of a queue is greater than or equal to the maximum bandwidth allocated, the queue is set to a LO priority setting. (Chapman, Figure 5, block 516). An IP data packet is transferred to its corresponding queue

by consulting a mapping table held in memory. (Chapman, Col. 10, lines 64-66). The mapping table maps variables traffic class, input port and output port, to a particular queue. (Chapman, Col. 11, lines 1-3).

Thus, Chapman discloses marking all data packets within a queue with a priority setting (HI or LO) data packets. Chapman is silent about and does not teach or suggest a portion of data segments marked depending on the guaranteed bandwidth percentage for the particular class of service, wherein a portion is less than all of the data segments. Thus, Chapman does not disclose “marking a portion of the data segments of each class of service corresponding to the associated guaranteed percentage of the transmission bandwidth of the class of service if data transmitted from a class of service exceeds the associated guaranteed percentage of the transmission bandwidth of the class of service, wherein a portion is less than all of the data segments,” as claimed.

Because Chapman does not teach or suggest each and every limitation of independent claims 1, 7, 13 and 19, Chapman does not anticipate claims 1-2, 4, 6-8, 10, 13-14, 16, 18-20 and 22 under 35 U.S.C. §102(e).

#### **Rejections under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 3, 5, 9, 11-12, 15, 17, 21, 23 and 24 under 35 U.S.C. §103(a) as being unpatentable over Chapman in view of Kusumoto (USPN 6,975,630, “Kusumoto”).

As discussed above, with regards to independent claims 1, 7, 13, and 19, Chapman does not disclose “the portion of data segments marked corresponds to the associated guaranteed percentage of the transmission bandwidth of the class of service.” Applicants respectfully submit that Kusumoto does not supply the missing limitations.

Kusumoto discloses avoiding cell disposal in a buffer. Kusumoto does not teach or suggest “the number of data segments marked corresponds to the associated guaranteed percentage of the transmission bandwidth of the class of service.”

Accordingly, applicants respectfully submit that applicant's invention as claimed in claims 3, 5, 9, 12, 15, 21, 23 and 24 is not rendered obvious by Chapman in view of Kusumoto, and respectfully request the withdrawal of the rejection under 35 U.S.C. § 103(a).

**Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then applicants hereby request such extension.

Respectfully submitted,

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